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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT OF THE UNITED
STATES VIRGIN ISLANDS

Plaintiff

v.

22 Civ. 10904 (JSR)
Oral Argument

JP MORGAN CHASE BANK N.A. et
al.

Defendants

New York, N.Y.
September 6, 2023
10:15 a.m.

Before:

HON. JED S. RAKOFF

District Judge

APPEARANCES

MOTLEY RICE
Attorneys for Plaintiffs
DAVID I. ACKERMAN
LINDA SINGER
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ERIC HAWKINS

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(In open court; case called)

THE COURT: Counsel, please state your appearances.

MS. SINGER: Linda Singer for the United States Virgin Islands.

MS. BOGGS: Elizabeth Boggs for the United States Virgin Islands.

MR. ACKERMAN: David Ackerman for United States Virgin Islands.

MR. NARWOLD: Bill Narwold, Motley Rice for USVI.

MS. ELLSWORTH: Felicia Ellsworth for JP Morgan Chase, joined by my colleague Eric Hawkins, both from Wilmer Hale.

THE COURT: My courtroom deputy is absent today and my law clerks are even apparently more technologically challenged than I am, which is saying a good deal, but we need to move this along.

So this is argument on the challenges under *Daubert*. So my preliminary view is that none of these witnesses should be admitted in any respect. It looks to me like they are mostly either irrelevant, or testifying about matters that are exclusively for the Court, or testifying about matters that are solely within the prerogative of the jury. So I am inclined to strike them all. But I will give you each an opportunity to talk me out of it.

I will ask each side to pick which of their experts they think is most clearly admissible, and tell me why.

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1 So starting with the government of the Virgin Islands.

2 MS. BOGGS: Good morning, your Honor. Professor Carr
3 is our human trafficking expert and all --

4 THE COURT: So why is trafficking an issue in this
5 case? It's not in the statute, is it?

6 MS. BOGGS: Yes, your Honor. Sex trafficking, we need
7 to establish that there was a sex trafficking --

8 THE COURT: Wait a minute. Let's take a look, what is
9 it, it's 18 U.S.C. -- give me the section again.

10 LAW CLERK: 1591.

11 THE COURT: I'm sorry?

12 LAW CLERK: 1591.

13 THE COURT: 1591. Thank you.

14 So I don't see anywhere in the actual language of the
15 statute the word "trafficking." It is in the title. Of
16 course, the law of the United States has been clear for a
17 hundred years that the titles are irrelevant. So I don't see
18 anywhere in the statute any reference to the term
19 "trafficking." Moreover, if it were in the statute, it would
20 be a legal term whose definition would be left to the exclusive
21 province of the Court.

22 MS. BOGGS: Your Honor, there are factual
23 determinations that need to be made about whether the
24 commercial sex was engaged in through force, fraud or coercion
25 for adults or whether there was just commercial sex with minors

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1 under the statute.

2 THE COURT: Those are everyday terms that a jury can
3 determine when properly instructed by the Court. I don't know
4 why we need an expert.

5 MS. BOGGS: Your Honor, in other cases they have used
6 experts to educate the jury about what human trafficking --

7 THE COURT: Well, those are other cases not binding on
8 me.

9 MS. BOGGS: So in sex trafficking cases, there are a
10 lot of misconceptions about sex trafficking and what it looks
11 like. For example, there are a lot of misconceptions that
12 human trafficking victims are going to not have freedom of
13 movement; that they're going to be locked in a room; that --

14 THE COURT: So that is a question of law. If you
15 wanted -- I, frankly, am not sure you're right in your
16 assumption, but assuming you were, you would be entitled to an
17 instruction to the jury that force, fraud, coercion or whatever
18 doesn't mean that they didn't have freedom of movement or
19 something like that. That's a question of law. I don't see
20 it's a question for an expert at all.

21 MS. BOGGS: I appreciate that --

22 THE COURT: If 500 experts testified that in their
23 opinion that was or was not an element of force, fraud or
24 coercion, I would have to strike all 500. They were invading
25 my province to tell the jury what the law is.

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1 MS. BOGGS: Well, I think there's the law force,
2 fraud, and coercion, but what does that look like. In the
3 example I gave you --

4 THE COURT: What do you mean what does that look like?
5 That's for factual evidence. These are not terms that are
6 exactly unknown to everyday citizens. Force, fraud, coercion
7 are terms that every member of the jury, every jury I've ever
8 had, understands from their everyday experience. But if they
9 need a more specific definition like fraud involves
10 misrepresentations or something like that, that's a legal
11 question, not an expert question.

12 MS. BOGGS: **So, your Honor, I appreciate that, but in**
13 **other cases there has been a view that it's been helpful to the**
14 **jury to hear, for example, the bonds that can form and the**
15 **relationships or that victims may not act or look how you would**
16 **expect a victim to act. Having that on-the-ground information**
17 **about what human trafficking looks like, for example, having a**
18 **victim who may think she is --**

19 THE COURT: Let me make sure I understand the
20 argument. The argument is the functional equivalent if someone
21 was on trial for murder, you think an expert could be admitted:
22 Ladies and gentlemen, although I'm not speaking to the facts of
23 this case per se, because I have no personal knowledge of the
24 facts of this case, as an expert on murder, I want to tell you
25 how murders are often carried out. I can't believe any court

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1 in the United States would admit that, and certainly it doesn't
2 meet *Daubert*.

3 MS. BOGGS: Your Honor, I think that's a distinct
4 scenario. Here, sex trafficking is not very well understood so
5 the examples I have given you, there are a lot of popular
6 misconceptions, and that's something that both of the proffered
7 experts in this case agree --

8 THE COURT: I don't agree. I don't know what their
9 basis is for saying that. But, in any event, as I say, if a
10 jury is under what you believe is a misconception, then you're
11 entitled to instruction to clean up or counteract those
12 misconceptions. Those are misconceptions about the meaning of
13 the statutory terms, which is a question of law.

14 MS. BOGGS: Well, Professor Carr will also talk about
15 red flags that are used in the field to see whether there's
16 human trafficking and to identify potential human trafficking,
17 and that's an industry standard that is also helpful to have an
18 expert's testimony so that we can identify particular red flags
19 in JP Morgan documents.

20 THE COURT: Wait a minute this goes now to what JP
21 Morgan should have doped out?

22 MS. BOGGS: Well, it goes to that there were -- in the
23 field of human trafficking, there are certain red flags that
24 are indicative of human trafficking and whether or not -- first
25 establishing what those red flags.

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1 THE COURT: Red flags indicative of human trafficking.
2 Remember, trafficking is not in the statute. So you think you
3 need an expert to tell what there -- there are red flags of
4 force, fraud, coercion, threats? Why isn't that just everyday
5 evidence about what happened in this case?

6 MS. BOGGS: Your Honor, for example, one of the things
7 that Professor Carr opines about is that JP Morgan's role in
8 setting up an account for young models at a private bank on
9 behalf of Jeffrey Epstein or at his request was indicative of
10 sex trafficking because the modeling industry is one way that
11 girls are sometimes recruited into sex trafficking and how that
12 should be a red flag for sex trafficking at a financial
13 institution.

14 THE COURT: So what element of your causes of action
15 is that related to?

16 MS. BOGGS: It relates both to the existence of a sex
17 trafficking venture that there was commercial sex engaged in
18 with force, fraud, or coercion or minors --

19 THE COURT: So with respect to that, Mr. Epstein's
20 activity, the evidence is Mr. Epstein's activity, not whether
21 it suggested something in the abstract that was a red flag of
22 improper sex activity. Either he did it or didn't, which, to
23 be frank, I don't think should be very difficult for you to
24 prove in this case. But in any event, the relevant thing is
25 what he did. Okay.

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1 So then we turn to your second element, which is what
2 you think the bank should have figured out, right?

3 MS. BOGGS: That's correct. And so having an expert
4 talk through the role of how sex trafficking -- the red flags
5 and how it would present in these documents.

6 THE COURT: Red flags to whom? To bankers?

7 MS. BOGGS: Correct, within JP Morgan.

8 THE COURT: And which expert has the expertise in what
9 a banker should have perceived?

10 MS. BOGGS: Well, Professor Carr can opine about red
11 flags in human trafficking and --

12 THE COURT: Yeah, well, I -- yes, and then I -- again,
13 it seems to me you're making -- and both sides are making much
14 more complicated what is a straightforward issue. Depending --
15 and it's still part of the summary judgment motions that I have
16 to decide, but either you're going to have to show the bank
17 knew or recklessly disregarded evidence that their money was
18 being used to promote sex trafficking or you're going to have
19 to show that they knew or should have known that it was being
20 done. Under any of those standards, familiar standard
21 standards that have been part of the legal system for about a
22 thousand years, the question is what should a reasonable banker
23 in this position should have known, if it's the negligence
24 standard, or what should -- or what did in fact the banker know
25 or willfully disregard information actually given to him.

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1 On the latter, I don't see the relevance of the expert
2 at all. On the former; that is to say the negligence standard,
3 I think the -- I don't see any of the experts really speaking
4 to that as opposed to just what they think in the abstract are
5 red flags of sex trafficking.

6 MS. BOGGS: Your Honor, the role of Professor Carr
7 would be to explain to the jury what are the red flags of sex
8 trafficking and also look through JP Morgan's documents. For
9 example, some of JP Morgan's own compliance policies talked
10 about sex trafficking and red flags for sex trafficking. And
11 so that would be the role here is to offer that expertise and
12 explain what they should have been looking for when they're
13 reviewing documents and how those red flags appear in this
14 case.

15 THE COURT: Do you agree that if I adopt on summary
16 judgment the argument made by your adversary, that the standard
17 is either that they knew or willfully -- recklessly disregarded
18 knowledge that their money was being used to promote sexual
19 misconduct, that what you just proffered would be irrelevant?

20 MS. BOGGS: No, your Honor. I think it would still be
21 helpful for the jury to be educated about the red flags of sex
22 trafficking so that they can identify along the documents of JP
23 Morgan --

24 THE COURT: I think it's a complete diversion from the
25 facts of the case. But, all right, I hear your arguments.

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1 Let me hear from defense counsel and their best shot.

2 MS. ELLSWORTH: Thank you, your Honor. We disclosed
3 four experts. Only three have been challenged by the
4 government of the U.S. Virgin Islands --

5 THE COURT: As you may know, under *Daubert*, the Court
6 has an independent duty to conduct a rigorous analysis, so it
7 doesn't matter whether it's been challenged or not.

8 MS. ELLSWORTH: An expert they didn't challenge would
9 only be responsive to two of the experts that we challenged,
10 your Honor, and not Ms. Carr--

11 THE COURT: So assuming I knock them out, two of yours
12 go.

13 MS. ELLSWORTH: It would be one I think, your Honor.

14 In any event, the expert that has been challenged by
15 the U.S. Virgin Islands that you heard briefing on that I would
16 submit doesn't fall prey to the any of the problems that you
17 correctly identified I think with Ms. Carr's report would be
18 Joseph Fonseca. He is a retired FBI agent who spent 20 plus
19 years conducting sex trafficking investigations.

20 THE COURT: Hang on one second. Let me look at my
21 notes on him.

22 MS. ELLSWORTH: Your Honor, in particular, if the
23 Court does not grant our summary judgment motion on the
24 obstruction count, Mr. Fonseca's testimony would be
25 particularly relevant. If the obstruction count is removed

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1 from the case, then I think we have to assess whether it would
2 be still be youthful to the jury to still hear from
3 Mr. Fonseca.

4 THE COURT: I'm sorry. I don't know why I'm having
5 trouble finding my notes on him but hang on. There it is.

6 So as I understand it, he is going to say that based
7 on his prior experience as a special agent, that filing
8 additional SARs by JP Morgan would not have caused earlier
9 federal charges against Epstein to be filed. Putting aside
10 completely the hearing that occurred in my court yesterday in
11 which representatives of several government prosecution
12 agencies; namely, the New York City Police Department, the
13 Alcohol Tobacco and Firearms Agency, and the U.S. Attorney's
14 Office, said that the reason they had investigated Mr. X, the
15 defendant in another case before me, was because of the SARs
16 filed by a little-known bank called JP Morgan Chase. Putting
17 that all aside, as I understand it, he has no prior experience
18 with SARs.

19 MS. ELLSWORTH: That's exactly the point, your Honor.
20 He has experience with sex trafficking investigations on behalf
21 of the Federal Bureau of Investigation. I expect his
22 testimony, if allowed to be presented, would cover the types of
23 material and information that he found useful as a special
24 agent who conducted actual sex trafficking investigations,
25 including the type of financial information that they might go

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1 out and seek in the course of an investigation, which would be
2 sought by subpoena and not by looking at regulatory filings
3 that might be might with another department.

4 THE COURT: I'm not sure what the relevance of this
5 is. The question if I -- if Mr. Jones in my hypothetical
6 purposely fails to bring to the attention of a government
7 agency as required, suspicious or even criminal activity, and
8 does so for the purpose of making sure that the government writ
9 large never finds out about this activity, what more is needed
10 for obstruction?

11 MS. ELLSWORTH: Well, I agree that that type of
12 purposeful conduct is what the U.S. Virgin Islands will have to
13 attempt to prove to make out their obstruction claim. What
14 Mr. Fonseca would testify to would be whether additional -- the
15 theory, as I understand it, that the plaintiff will seek to
16 establish at trial is that had JP Morgan made additional
17 reports to the federal government, that somehow would have
18 spurred more investigation of Mr. Epstein or perhaps a sooner
19 investigation of Mr. Epstein. So in response to that theory,
20 Mr. Fonseca' testimony --

21 THE COURT: But if they are charging obstruction even
22 from a civil standpoint, they still have to show intent.

23 MS. ELLSWORTH: Correct.

24 THE COURT: So they have to show that the reason these
25 SARs were not filed was because it was believed it would -- it

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1 might lead to government action, government criminal action.

2 MS. ELLSWORTH: I think that's right, your Honor. And
3 I won't re-argue the motion, but I don't see a world in which
4 they could possibly prove that. Putting that to the side --

5 THE COURT: So assuming that's what they have to show,
6 what does it matter what a guy in the FBI years ago would have
7 done or would not have done?

8 MS. ELLSWORTH: Well, then I suppose if the
9 government -- if the plaintiff is held to not being allowed to
10 suggest to the fact-finder that filing additional reports would
11 have spurred some action, if they're not allowed to make that
12 argument, then maybe Mr. Fonseca's testimony which rebuts the
13 theory that additional federal reports would have somehow
14 spurred some different action, potentially then that testimony
15 would be --

16 THE COURT: Well, yeah, I'm not going to deal today
17 with something that is implicit in any pretrial ruling that the
18 Court makes regarding evidence, which is if the door is opened
19 somehow by the other side, then stuff that is otherwise
20 irrelevant may become relevant. That's true of motions in
21 limine, and it's true of a *Daubert* motion as well.

22 But at least operate assumption which I think I will
23 hear from the defense, but I think is very likely where I am
24 not going to come out, which is they've got to show obstruction
25 intent to carry their burden on the -- to some -- you know, it

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1 may be -- intent may include reckless disregard, but I'm not
2 sure it would be in the obstruction area. It probably would
3 just be intent straightforward, I don't see the relevance.

4 MS. ELLSWORTH: Well, I think, again, most of our
5 experts are responsive to the testimony that the Virgin Islands
6 would put on.

7 THE COURT: And I agree with you if I am persuaded
8 contrary to where I am leaning at moment to allow in some of
9 their experts, then to the extent your experts respond to what
10 I allow in, likely that your experts could be admitted too.
11 But at least at the moment I'm leaning the other way.

12 MS. ELLSWORTH: And the last point I would make about
13 Mr. Fonseca, your Honor, is the testimony that he would provide
14 would -- putting aside the obstruction count, which may or may
15 not even be proceeding, to the extent the U.S. Virgin Islands
16 is arguing, as they have throughout this case, that the failure
17 by JP Morgan to file enough reports or to include certain
18 information in those reports somehow creates either
19 participation in or knowledge of a sex trafficking venture as
20 they have to prove under the participant beneficiary liability
21 count, then Mr. Fonseca's testimony about the fact that that
22 was not information he ever used in his 23 years in the FBI and
23 not information that would have been relevant to the actual
24 federal criminal investigation of the sex trafficking, I think
25 could have --

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1 THE COURT: Just out of curiosity, what is his -- what
2 does it matter whether he personally would have used this stuff
3 or not? He may have been a lousy investigator for all we know.
4 But his personal experience is not, I think, admissible under
5 *Daubert*. Under *Daubert* he has to identify a methodology that
6 would be used by law enforcement generally or something like
7 that, and I am not hearing where he says that.

8 MS. ELLSWORTH: Well, he's saying the FBI in his
9 division of the FBI this is what they did. So there's not
10 testimony from the U.S. Virgin Islands that says here's what
11 the FBI, you know, have a current --

12 THE COURT: Is that why they got so many cases wrong,
13 in all the instances of the Innocence Project has now shown
14 that they got wrong? That's an unfair comment, but I couldn't
15 resist.

16 But so how does he say -- when he's saying in his
17 experience the FBI doesn't look at this stuff --

18 MS. ELLSWORTH: He's saying that --

19 THE COURT: -- and shame on the FBI if that's correct.
20 But anyway, if that's what he's saying, how does he know that?
21 Is that a policy of the FBI do not look at SARs?

22 MS. ELLSWORTH: What he's saying is that the FBI has
23 at its disposal lots of resources to obtain information,
24 including financial information when it's conducting an
25 investigation, and that it does not use these types of treasury

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1 reports for a sex trafficking investigation. Whatever the case
2 is that your Honor had yesterday doesn't sound like it was a
3 sex trafficking case.

4 THE COURT: No, it was an identity theft case, so
5 the -- and I am, you know, that was a separate case, but I
6 don't quite understand if -- supposing the SAR in my
7 hypothetical had said: We are very suspicious for the
8 following reasons that Mr. Epstein is using our money to engage
9 in sexual coercion of minors on a massive scale, and you're
10 saying that he will testify, "Oh, we couldn't care less. We
11 don't want to know that. We would totally ignore that. We
12 wouldn't expect anyone to bring that -- in treasury to bring
13 that to our attention. We don't do that kind of inquiry." Is
14 that what he's going to say?

15 MS. ELLSWORTH: No, your Honor. I think what he would
16 testify to is that the way that a sex trafficking investigation
17 is conducted does not start nor finish nor is it particularly
18 aided by these reports to a completely different branch of
19 government that relate to financial regulations and not to sex
20 trafficking. What a sex trafficking investigation looks like
21 is interviews with victims and subpoenaing potential third
22 parties that might have information. JP Morgan never
23 received--

24 THE COURT: We all know what a great job they did with
25 Mr. Epstein. How many decades did they take to finally

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1 identify his misconduct?

2 All right. Thank you very much. Let me hear from
3 plaintiff's counsel on the point just raised.

4 MS. ELLSWORTH: Your Honor, do you want me to respond
5 to the argument about Ms. Carr or do you have on what you need
6 on Ms. Carr?

7 THE COURT: Let me hear from the other side on the
8 point you've just raised.

9 MR. ACKERMAN: David Ackerman. Good morning, Judge.

10 On the point just raised, I think you did hit the nail
11 on the head when you mentioned that he's testifying about his
12 own experience because that is all that Mr. Fonseca is doing.
13 He admitted in his deposition he didn't know what other FBI
14 agents were doing in other FBI field offices. I would also
15 note that although JP Morgan's briefing describes what they
16 claim is a truism, which is more information is better for law
17 enforcement, Mr. Fonseca for some reason is standing up and
18 saying the opposite, which is, well, we wouldn't want that
19 information. So those are the responses that I have.

20 THE COURT: Okay. All right. Yes?

21 MS. SINGER: Your Honor, if I may speak to another of
22 the U.S. Virgin Islands' proposed experts Mr. Amador.

23 Linda Singer, by the way.

24 So Mr. Amador serves I think a particularly important
25 function in this case. He is the certified forensic accountant

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1 presented by the U.S. Virgin Islands. This case, as your Honor
2 is well aware, involves financial records spanning from 2002
3 through 2013 and then beyond. Financial information is
4 contained in monthly financial statements for more than 130
5 different Epstein accounts. As JP Morgan has acknowledged,
6 more a billion dollars of transactions flowed through those
7 accounts. Mr. Amador is the expert who uses his professional
8 experience to frame those financial transactions which are
9 really at the heart of the U.S. Virgin Islands' case. Those
10 are the kinds of voluminous records that particularly lend
11 themselves to an expert's presentation to the jury which would
12 otherwise have to sort through a dizzying array of financial
13 information. Mr. Amador has presented those financial
14 transactions, including extensive cash payments, payments to
15 women, other forms of payment in charts that we think will be
16 particularly helpful to the jury.

17 THE COURT: So a couple of questions about Mr. Amador
18 first. If I conclude as part of the rulings on summary
19 judgment that the standard is actual knowledge or reckless
20 disregard as opposed to negligence, what's the relevance of his
21 testimony?

22 MS. SINGER: I think what Mr. Amador does is present
23 to the jury exactly the information that was available and
24 actually presented by JP Morgan including in its 2019 filing,
25 which we talked about with the Court last week. So I think he

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1 is directly relevant to the reckless disregard standard.

2 THE COURT: Well, also, I mean, for example, as part
3 of his testimony, as I understand it, is that Mr. Epstein's
4 payments to lawyers were suspicious because they seemed like a
5 large amount of legal fees. What possible relevance is that
6 and how is he arriving at that opinion? I would have thought
7 that counsel in this case are being paid such a huge amount
8 that we also should be very suspicious of all the lawyers in
9 this case.

10 MS. SINGER: If only, your Honor. We do not have that
11 problem, unfortunately.

12 So Mr. Amador serves two functions: One is the basic
13 presentation organization of the financial information. The
14 second is based on his experience as a certified forensic
15 accountant, he does identify unusual or exceptional
16 transactions. He presents a range of them that in particular
17 would have been available to the financial professionals and
18 compliance officials at JP Morgan. The first is cash, of
19 obvious significance in Mr. Epstein's case, given his known
20 history of paying for victims and recruiters with cash. The
21 payments to women, which he observes, based again on his
22 experience as a certified forensic accountant, were
23 inconsistent with Epstein's business activities. And then he
24 also does talk about attorneys in a particular regard in light
25 of the other transactional information that was present in this

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1 case, but also the trend of it. And that's what Mr. Amador
2 talks about.

3 So one of the questions obviously at play in the
4 obstruction count is whether there was an ongoing
5 investigation. I would point out, by the way, that Exhibit 4
6 to Ms. Ellsworth's declaration in this case also includes
7 information that that was an ongoing investigation because it
8 notes that victims were being interviewed, or at least one
9 victim in 2011. But put that aside, Mr. Amador is able to
10 observe based on his analysis of the financial records that if
11 he wasn't engaged -- if Epstein was not engaged in ongoing
12 traffic, then you would expect his legal expenses to decline
13 over time, but they didn't. And that itself was a red flag to
14 JP Morgan that he continued to engage in conduct and was the
15 subject of ongoing investigation.

16 And Mr. Amador explained that that is the kind of
17 trend information both that he as a forensic accountant, and he
18 cites to standards that he applies, the American Association --
19 I'm sorry -- AICPA standards for forensic services. He also
20 cites to the FFIEC manual which points to the red flags that
21 banks should observe in monitoring or conducting due diligence
22 of financial accounts. And, again, excuse me, I lost my train
23 of thought. But, again, that goes directly to the reckless
24 disregard standard in this case, although we stand by our
25 argument that while we meet reckless disregard that the

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1 standard here ought to be negligence for the --

2 THE COURT: I haven't resolved that yet. I will
3 though as part of the summary judgment motion.

4 Okay. Let me hear from defense counsel.

5 MS. ELLSWORTH: So as to Mr. Amador, your Honor, as
6 Ms. Singer just indicated, he purports to conduct a comparative
7 analysis of things that should have been suspicious or highly
8 unusual is another opinion he purports to offer, payments out
9 of the Epstein accounts without actually comparing them to
10 anything. He didn't compare Mr. Epstein's account activity to
11 any other account activity at the bank or to any other account
12 activity that he was familiar with in the course of his work.
13 He's a CPA. He's not a banker. The idea that somehow this
14 flow of funds, the trend, whatever it is that he purports to
15 identify, is suspicious or unusual, he doesn't have a basis to
16 make those sort of judgments or to offer that type of opinion
17 experience-wise. He also provides no comparator. So he
18 provides no suggestion that here's an account of similar
19 magnitude of funds, but we see fewer payments to lawyers, or
20 the payments to names that sound female are less than names
21 that sound male. He didn't even look at whether there were
22 male-sounding names that received payments out of the Epstein
23 account, and of course there were. So the whole sort of
24 comparative analysis that he purports to offer is both not
25 grounded in any reliable methodology but also not something on

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1 which he has any basis --

2 THE COURT: It's a very funny argument that I
3 understand plaintiffs are saying, well, it's just one aspect of
4 his opinion, and I will look at all aspects, but to say that a
5 lot of payments to lawyers is somehow proof of anything, you
6 know, so it's clear that Donald Trump hasn't committed any
7 crime because he never pays his lawyers, so -- but we will
8 regard that comment as facetious.

9 So, anyway, the -- but I understand your point. Okay.

10 Is there anything further that any one wanted to say
11 before we conclude this hearing? Yes?

12 MS. SINGER: Your Honor, if I may just briefly respond
13 to counsel's points on that.

14 THE COURT: Yes.

15 MS. SINGER: JP Morgan cites no authority for the
16 proposition that a forensic analysis has to be comparative, and
17 I think there is none. In fact, the fact that everybody is
18 doing something, as I frequently told my children, is not proof
19 that it is an appropriate thing to do. You look at --

20 THE COURT: Are you offering yourself as an expert?

21 MS. SINGER: No. My children would certainly come in
22 as adverse witnesses on that point.

23 You can certainly have conduct that is suspicious,
24 unusual, or exceptional in light of the prior history of that
25 customer in terms of their business purpose and in terms of the

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1 bank's own knowledge. So I think the idea that this needed to
2 be comparative is simply unfounded.

3 I want to respond to the point on men because I know
4 JP Morgan extends -- takes issue with that in their briefing.
5 Mr. Amador does testify that there was no trend with regard to
6 men that he observed in his analysis of data, and that in fact
7 the payments to men were smaller, they weren't round dollar and
8 repetitive, or of that kind of significant in volume, which I
9 think again goes to the point of why Mr. Amador's detailed
10 knowledge and expertise is useful to the jury to address those
11 kinds of misassertions.

12 In terms of other experts to present to your Honor,
13 taking your invitation very briefly, I do want to address the
14 U.S. Virgin Islands banking expert Professor Rush. And I
15 would, by the way, point your Honor to -- with hesitancy point
16 your Honor to any legal cases, as I know you are so familiar
17 with them, but *Sharkey v. JP Morgan* case is another case
18 against this defendant makes just this point; that there the
19 expert testified as to what conduct included "red flags of
20 possible fraud and/or money laundering in the financial
21 industry including incomplete due diligence, suspicious fund
22 transfer activity" --

23 THE COURT: If I understand Mr. Rush's proposed
24 testimony, he is going to say that he looked at all of your
25 evidence, and that he concluded that it showed that Mr. -- I'm

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1 sorry -- that the defendants had committed one violation or
2 another, and, I mean, that's the ultimate question for the
3 jury, is it not?

4 MS. SINGER: I don't believe so, your Honor. I think
5 what Professor Rush does importantly is explain, based on
6 regulatory guidance, prudent banking practice, and JP Morgan's
7 own policies and procedures, first, again, what the red flags
8 of suspicious financial activity are that regulators advise
9 banks to monitor. These are reflected in complicated guidance
10 from regulators like the federal financial institutions
11 examination council which is not going to be familiar to
12 members of the jury. He explains what a financial institution
13 is expected to do when it observes those red flags. He
14 explains why SARs were untimely and inadequate in this case,
15 the importance of SARs to financial regulators. All of those
16 things are the kinds of evidence or expertise --

17 THE COURT: Let me make sure I understand. Is he
18 saying that a banking employee would have seen these red flags
19 or is he saying that if they had had a better are detection
20 program in place, then they would have seen these red flags?

21 MS. SINGER: He is saying that they would have seen
22 these red flags.

23 THE COURT: So what's his basis for saying all of
24 that?

25 MS. SINGER: He summarizes and explains --

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1 THE COURT: Is he a former banking employee?

2 MS. SINGER: Not of JP Morgan, your Honor. He was a
3 former compliance official at Wells Fargo, and he was the chair
4 of the interagency task force responsible for financial
5 enforcement in the federal government, so he understands these
6 issues as a regulator, as a prosecutor --

7 THE COURT: Well, no, no. But I don't think a
8 regulator or prosecutor is relevant to what you just told me.
9 If his testimony is to say that a reasonable bank employee
10 would have seen these suspicious activities, which, by the way,
11 that would only be relevant if the standard was negligence, but
12 assuming for the moment the standard was negligence, then that
13 has to be based on his knowledge and experience of what a bank
14 employee would be called upon to see, do, whatever; not upon
15 what a law professor what see, do, or whatever or what someone
16 handling some commission would see, do, or whatever.

17 MS. SINGER: Except, your Honor, to the extent that as
18 a regulator and prosecutor, and he was also head of corruption
19 and bribery at Wells Fargo, so did work in the private sector
20 in compliance, and as an academic understands what an effective
21 BSA-AML compliance program identifies to a bank, and that is
22 confirmed by the evidence that he will point to that shows that
23 it was observed. So it is framing the red flags that would
24 have been evident to JP Morgan and then organizing the facts
25 that provide the basis for that opinion.

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1 THE COURT: All right. Let me hear briefly from
2 defense counsel, and then I have another matter, telephone
3 conference at 11:00, so we need to bring this to a close.

4 MS. ELLSWORTH: Thank you, your Honor. I'll be brief.

5 Professor Rush is, like several of the other disclosed
6 experts of the U.S. Virgin Islands, serving merely as a
7 mouthpiece for counsel. He goes through emails and documents
8 and tells a narrative that is the U.S. Virgin Islands' theory
9 of the case. That is not the province of an expert. It is the
10 province of a fact-finder to look at those materials.

11 He also does not have experience in evaluating the
12 effectiveness or adequacy of BSA or AML compliance programs.
13 He was a federal prosecutor in fraud. He didn't do BSA-AML
14 compliance reviews. If he did, he did maybe one or two. Then
15 spent three years at Wells Fargo relatively recently, so not
16 during the time period in question when allegedly these
17 so-called red flags would have been apparent to JP Morgan. So
18 I think the testimony is improper for a variety of reasons.

19 The first is it does not provide any expertise or
20 helpfulness to the jury. It is simply a recitation of evidence
21 that the jury can weigh itself.

22 Secondly, he doesn't actually have the relevant
23 expertise to provide the opinions he purports to offer.

24 And the third is to the extent he offers an opinion
25 that is within the province of expert testimony, it would be

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1 simply that the BSA-AML program at JP Morgan prior to 2013 was
2 not as good as it could have been, which would simply be a
3 negligence-type opinion which has no relevant to the claims in
4 this case which require, as your Honor questioning has
5 demonstrated, a knowing and intentional obstruction of some
6 sort of investigation, or a knowing and intentional violation
7 of the BSA as opposed to here we're talking about the TVPA.

8 The last point I would note is he also has this
9 impermissible attempt to calculate what the criminal sentence
10 would be under the United States Sentencing Guidelines. The
11 Court doesn't really need any help with that at all, but at a
12 minimum, that should certainly not be presented to the jury.

13 THE COURT: Yes, and I will put out of my mind when
14 addressing that particular question the fact that, as I have
15 stated at least 200 times now on the record, I regard the
16 Sentencing Guidelines as totally irrational. But that's a
17 separate issue.

18 Very good. Thanks so much.

19 (Adjourned)
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